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June 10, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 2, 2005

Case Number: TSO-0189

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter the individual) to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that the individual has met his burden to bring forward sufficient evidence to show that his access authorization should be restored.

I. History

This administrative review proceeding began with the issuance of a Notification Letter, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a detailed statement of the derogatory information.

Specifically, the Notification Letter indicated that a DOE consultant psychologist (hereinafter also referred to as consultant psychologist) diagnosed the individual as suffering from bipolar disorder II, depressive, severe, with psychosis. This diagnosis was based on an evaluation of the individual that took place on February 24, 2004, and was set forth in an evaluation letter dated

¹/ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

February 28, 2004. According to the letter, the DOE consultant psychologist found this disorder causes or may cause a significant defect in the individual's judgment or reliability. The letter stated that this information creates a security concern under 10 C.F.R. § 710.8(h) (Criterion H). ²

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that Letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual was represented by an attorney. The individual testified on his own behalf, and presented the testimony of his treating psychologist (individual's psychologist), a psychiatrist who diagnosed and treated his bipolar disorder (individual's psychiatrist), the staff psychologist at the site where the individual is employed (site psychologist), his wife, his father, and a co-worker. The DOE Counsel presented the testimony of the DOE consultant psychologist.

II. Hearing Testimony

I will first describe the initial testimony of the DOE consultant psychologist, which was based on his February 2004 evaluation. Next, I will discuss the testimony of the individual's three experts: his psychologist; his psychiatrist; and the site psychologist. Thereafter, I will describe the testimony of the individual, his wife, his father, and co-worker. The testimony of the individual's witnesses updated and completed the information in this case, thereby offering some new perspectives on the conclusions about the individual that the DOE consultant psychologist reached in February 2004. I will then set forth the

2/ Criterion H relates to a mental condition which, in the opinion of a licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.

DOE consultant psychologist's updated views, based on the new information provided by the other witnesses.

A. The Four Expert Witnesses: DOE Consultant Psychologist [first round]; Site Psychologist; Individual's Psychologist; Individual's Psychiatrist

1. Consultant Psychologist

In the first portion of his testimony, the DOE consultant psychologist reiterated the diagnosis that he reached in his original evaluation. That evaluation took place about 15 months prior to the hearing. As stated above, this diagnosis was that the individual suffered from bipolar disorder II, depressive, severe with psychosis. Transcript of Hearing (Tr.) at 8.

The witness testified about the individual's mental health history. He referred to a 2001 episode in which the individual allegedly behaved in a threatening manner towards his supervisor. He noted several incidents in which the individual took off from work because he could not cope, and then had difficulty returning to work. The consultant psychologist recounted the following further psychological/psychiatric incident. In early 2004, the individual voluntarily sought admission to a local hospital for psychiatric evaluation. At that time, he was on several medications which were prescribed to treat him for depression. During this hospital stay, a psychiatrist determined that the individual was not suffering from depression, as had been previously thought, and instead diagnosed the individual with bipolar disorder. He changed the individual's medication to one which is appropriate for that condition. Tr. at 16-24.

It was the opinion of the consultant psychologist that the individual should demonstrate six months of psychiatric stability in order to establish that his bipolar disorder did not create a security concern regarding his judgment and reliability. Tr. at 29. Since, at the time of the evaluation, the individual had just been released from his hospital stay, the consultant psychologist

did not believe the individual had the requisite period of psychological stability. Tr. at 9.

2. Site Psychologist

The site psychologist is a clinical psychologist employed by the Occupational Health Services Unit at the plant where the individual works. He indicated that the individual had been misdiagnosed with depression for several years and had therefore been treated with incorrect medication. Tr. at 33. He noted that it was not until 2004 that the individual was correctly diagnosed with bipolar disorder, which could not be managed with medication designed to treat depression. Tr. at 35. He testified that once the individual received the correct medication, he showed a rapid, consistent response. Tr. at 39.

He was very optimistic about the prognosis for this individual. He noted the following factors in this regard. The individual recognized on his own that "something was wrong," and consistently sought help for his problem. The individual has a strong family support system. He had a rapid and consistent response to his medication and good compliance with treatment regimen. Tr. at 45-47. He also noted that the individual has a keen awareness and insight about his condition, and excellent management of his lifestyle. He believed that the individual has shown a very long and sustained period of remission. Tr. at 52.

With respect to the 2001 incident in which the individual purportedly threatened his supervisor, the site psychologist, who was part of the threat assessment team for this incident, testified that the individual raised his voice and behaved inappropriately, but was not a danger or threat. Tr. at 34.

3. Individual's Psychologist

The individual's psychologist indicated that he is a clinical psychologist and health service provider in psychology. He began treating the individual in June 2003 for emotional problems and work-related difficulties. Tr. at 63. He stated that he currently meets with the individual every other week for a fifty minute session, and that he has done so for about one year. Prior to that he met with the individual once a week. Tr. at 69.

He confirmed that the initial diagnosis of depression for this individual was not correct. Tr. at 63-64. When the correct diagnosis of bipolar disorder was made, and the individual received correct treatment, he made significant progress. The individual's psychologist testified that today the condition is in remission, and that there have been no signs of recurrence over the past year. Tr. at 78. He also pointed out that the individual has even dealt with the stress of the hearing itself "significantly better" than the average person because he has been able to "compartmentalize it." Tr. at 82.

Further, this witness pointed out that the individual has a "number of additional advantages in managing this condition and maintaining good functioning. He has always anchored his life in his commitments to his family, to his church community and has enjoyed friendships that involve healthy leisure activities. He has a very supportive spouse. He is committed to the growth and development of his two boys. . . . [T]hese are not new developments. . . . These are more rooted in his basic character. . . . He is also conscientious about his lifestyle. He does not have any history of drinking or drug abuse. . . . There is no room in his lifestyle for those negatives. So that is a profile of both I think the positive and the absence of negative influences that go to his excellent prognosis." Tr. at 67. The individual's psychologist indicated that he thought it was important that the individual sought out help when he needed it. Tr. at 67-68. ³

4. The Individual's Psychiatrist

This witness is board certified in general psychiatry and is the Director of Behavioral Medicine at the local hospital where the individual was admitted in 2004. Tr. at 84-85. He first saw the individual when he was admitted to the hospital in January 2004, and then regularly thereafter on an outpatient basis. He last saw the individual on February 11, 2005. This witness confirmed that he was the physician who made the diagnosis of bipolar disorder. Tr. at 85-86.

This witness testified that the individual has been stable for about a year and has been asymptomatic for that period of time. He stated that the individual's judgment is now completely intact, as is his impulse control. He indicated that the individual is in

3/ The individual submitted a March 23, 2005 written report from this psychologist that confirms the above testimony.

remission and that his medication is helping him remain so. Tr. at 87-91. He further stated that there is little concern about the future behavior of this individual. He believes that in the event the individual experiences the onset of another bipolar episode, he will seek help, listen to others, and know what symptoms to look out for. Tr. at 94-96.

B. Character Witnesses

1. The Individual's Co-worker

This witness has known the individual for ten years and has worked with him for six years. He sees the individual 5 days a week. He has trust in the individual and believes the individual is dedicated to accuracy. Tr. at 102. He confirmed that the individual, himself, recognized that he needed professional mental health care. Tr. at 104. He believed that the individual was under a lot of stress because he was accepting significant overtime hours. Tr. at 108. He stated that the individual no longer feels the need for overtime and would not feel shy about rejecting it. Tr. at 115. He believes that in recent months, the individual has been much more calm, stable, and collected. Tr. at 110-111.⁴

2. The Individual's Father

The individual's father stated that he and his son have a close relationship, and that they socialize and eat together frequently. Tr. at 121. He stated that the individual is currently much more calm, and does not seem to have the problems that he formerly had. Tr. at 122. He stated that he will watch out for his son's well-being and would tell him to get help if he saw unstable behavior. Tr. at 124.

3. The Individual's Wife

The individual's wife stated that she and the individual have a close relationship, that they have known each other for 21 years, and have been married for 14 years. She further stated that the individual has good support from his family, doctors and church. Tr. at 134. The wife testified that the individual recognized that

4/ This witness also provided a written statement confirming this testimony. The individual submitted into evidence letters from several co-workers and his supervisor, all of whom indicated that they believed the individual to be an excellent worker, and an honest and trustworthy person with good judgment.

he was having a mental health problem, and sought help on his own volition. Tr. at 129-31. She stated that she would tell the individual if she thought he needed some immediate treatment, but she did not think she would ever have to do this because the individual himself has always recognized if he needed help and has been strongly motivated to seek help on his own. Tr. at 134. Overall, she believes that his bipolar episodes were triggered by stress and lack of sleep, which were caused by excessive overtime work. She does not believe that he would be pressured into accepting excessive overtime in the future. Tr. at 135-37. She states that she and her husband currently live a very regimented routine, involving regular eating and sleeping. The individual conscientiously follows his doctors' orders. Tr. at 133. She believes that he has been stable since he was put on new medication for bipolar disorder in February 2004 and was discharged from the hospital. Tr. at 132, 143.

C. The Individual

The individual testified that he now feels in stable mental condition, and has felt like "his old self" for a year. Tr. at 164. He stated that he feels a healthy self esteem and has adequate coping skills. Tr. at 152. As an example, he pointed out that waiting for the instant hearing has been stressful, but he was able to manage. Tr. at 161.

He is committed to following his doctors' recommendations. Tr. at 156. He stated that he leads a regulated life, and is on a strict schedule. Tr. at 157. He traces his last bipolar episode to excessive overtime and lack of sleep. He stated that he recognized that "something was not normal," and that he needed to get some help. Tr. at 149. He indicated that he is no longer inclined to accept overtime. Tr. at 150.

Finally, the individual described the 2001 incident in which he allegedly threatened his supervisor. He stated that he became loud and excited when he was on the phone with her. He indicated that he did not use good judgment by speaking to her on the phone, because, in his view, "you always say more on the phone than you do in person." Tr. at 146. He deeply regrets the incident and admitted that he made a number of mistakes. *Id.*

D. Consultant Psychologist's Second Round of Testimony

After hearing the testimony from all the above witnesses, the consultant psychologist provided a revised diagnosis of this individual. This revision was based on the new, updated information offered by the individual's expert witnesses, the

individual's family members and co-worker, and the individual himself.

The consultant psychologist noted that he had a "snapshot" of the individual at a single point in time 15 months prior to the hearing, when the individual had just been released from a stay in the hospital for psychiatric evaluation and treatment. He testified that there is now "strong evidence to support the statement that [the individual's] condition is in remission, he's well controlled and stabilized with his medication and he's demonstrated adequate stability and remission for several months. . . .we are looking at nine to ten months of good symptom remission and good overall psychiatric and social function. And so I don't think he has an illness with a defect in judgment or reliability at this point." Tr. at 166-67. This witness also thought that the individual "will be very responsible" about handling any bipolar symptoms that might return, getting them quickly under control. Tr. at 168.

III. Standard of Review

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

I find that the testimony described above resolves the security concerns related to the individual's mental health and his judgment and reliability. As is evident from my discussion of the testimony, the experts agree that the individual suffers from bipolar II disorder, that this condition is currently in remission, and that it has been so for a number of months. In this regard, they agree that his medication controls the condition, and that the individual is committed to meticulously following his doctors' recommendations. Although there exists the possibility that he may have a bipolar incident in the future, they are also convinced that he will seek immediate help should he sense that he may be experiencing symptoms of a bipolar episode.

Further, the individual and his wife convinced me that they are indeed committed to maintaining a regular routine that is necessary for the individual to maintain his stability. I am persuaded that he will continue his therapy as long as his psychologist believes it is necessary, and that he recognizes the importance of seeking immediate professional help, should his bipolar symptoms return. I believe that the individual is very knowledgeable about his condition and will act quickly and appropriately to maintain his stability. I am convinced he has a strong support system that includes his family and church, and that this is also an important factor that promotes his mental stability.

As a final matter, with respect to the 2001 incident between the individual and his supervisor, I find that this matter is now well in the past, and that the individual deeply regrets any inappropriate behavior in which he may have engaged. Ultimately, the evidence indicates that the individual did not threaten his supervisor, but did exercise poor judgment. See Tr. at 34-35; Notification Letter at 2. I see no reason for any continuing security concern arising from this incident.

V. CONCLUSION

As the foregoing indicates, the individual has provided a persuasive showing that his mental health is now stable. I note in particular the testimony of the consultant psychologist to the effect that, in general, the likelihood of a recurrence of a

bipolar episode in a patient suffering from this condition is diminished by a number of factors, including "good medication, and mental health treatment compliance, as well as reduction in psycho/ social stressors, and good management of his behavior, lifestyle and social rhythms. What that would refer to would be meals on time, sleep on time, not staying up late. Because with bipolar disorder it is thought that the condition can be triggered by changes or stresses in your circadian rhythm." Tr. at 27. I found highly persuasive the testimony of the individual and his wife that they have taken precisely these steps, and are sincerely committed to a regulated life-style which will promote the individual's good mental health.

Based on the considerations set forth above, I find that the individual has resolved the security concerns under 10 C.F.R. § 710.8 (h). It is therefore my decision that his suspended access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: June 10, 2005